

82-1625

NUMBER A 863

SUPREME COURT OF THE
UNITED STATES OF
AMERICA

Office - Supreme Court, U.S.
FILED

MAR 9 1983

ALEXANDER L. STEVAS,
CLERK

RALPH BOUMA and MRS. RALPH BOUMA

Petitioners

vs

LARRY C. IVERSON, INC.,

Respondent

ON PETITION FOR WRIT OF
CERTIORARI FROM THE SUPREME
COURT OF THE STATE OF
MONTANA

PETITION FOR A WRIT OF CERTIORARI

RALPH BOUMA
Attorney Pro Se
P.O. Box 220
Choteau, Mt. 59422
Tel: (406) 466-5374

JOHN ALBRECHT
Attorney for Mrs. Ralph Bouma
P.O. Box 193
Choteau, Mt. 59422
Tel: (406) 466-2621

NUMBER A 863
SUPREME COURT OF THE
UNITED STATES OF
AMERICA

RALPH BOUMA and MRS. RALPH BOUMA

Petitioners

vs

LARRY C. IVERSON, INC.,

Respondent

ON PETITION FOR WRIT OF
CERTIORARI FROM THE SUPREME
COURT OF THE STATE OF
MONTANA

PETITION FOR A WRIT OF CERTIORARI

RALPH BOUMA
Attorney Pro Se
P.O. Box 220
Choteau, Mt. 59422
Tel:(406) 466-5374

JOHN ALBRECHT
Attorney for Mrs. Ralph Bouma
P.O. Box 193
Choteau, Mt. 59422
Tel:(406) 466-2621

QUESTIONS FOR REVIEW

The following federal questions are presented for review by this petition for a writ of certiorari:

1. Did the Montana Courts violate due process of law when, among other things, the Buyers under a land exchange contract were not allowed to raise the defense of standing on the basis that the moving Stockholders had obtained their stock by a fraud as a defense to being bound by a prior state court decision in a civil action where they were not a party?

2. Did the Montana Courts violate due process of law when they refused to allow Ratification and Estoppel to be raised as defenses to an action to void a land exchange contract based upon agents acting without authority although such defenses were provided by Montana Statutes and case law?

3. Did the Trial Court violate due process of law when the Trial Judge was not disqualified for bias and prejudice?

4. Did the Montana Supreme Court violate due process of law when the members refused to disqualify themselves after being named in a civil rights action brought by the Buyers and receiving knowledge that they were named as potential defendants in an in camera verified application for a grand jury?

5. Did the Montana Supreme Court violate due process and equal protection of the laws then it required Ralph Bouma to be represented by an attorney at oral argument.

6. Did the Montana Supreme Court violate due process of law when it awarded \$500.00 in damages on appeal without any notice or opportu-

ity to be heard.

PARTIES TO THE ACTION

Ralph Bouma and Mrs. Ralph Bouma, Petitioners

Larry C. Iverson, Inc., Respondent

TABLE OF CONTENTS

	<u>PAGE</u>
Questions for Review	1-4
Parties to the Action	4
Opinions Below	14
Jurisdiction	14
Constitutional Provisions	15
Statement of the Case	15
Argument	
I. The Buyers were held bound by a prior court decision	26
which they were not parties. Their defense that the prior	
court decision was obtained by a fraud on the court was	
ignored by the Montana Courts. This violated due process of	

law because the buyers were not parties to the prior court action.

II. An unforeseen change in State Court civil procedure 31
denies the Buyers right to due process of law.

III. The Montana Trial Court denied the Buyers right to 35
due process of law by refusing to remove Judge Leonard
Langen from the case.

IV. The Montana Supreme Court denied the Buyers right to 40
due process of law by acting upon bias and prejudice.

V. The Montana Supreme Court refused to allow Ralph Bouma to orally argue his case, Pro Se. This violated the due process and equal protection clauses of the United States Constitution.

43

VI. The Buyers were ordered to pay damages on appeal to the Corporation in the amount \$500.00. This order was made without notice or opportunity to be heard.

49

TABLE OF AUTHORITIES

	<u>PAGE</u>
Audit Services, Inc. vs. Francis Tindall Const. (Mt., 1979) 600 P.2d 811	32
Blizzard vs. Frechette (1st.Cir., 1979) 601 F.2d 1217	35
Bouie vs. Columbia (1964) 378 U.S. 347, 12 L.Ed. 2d 894, 84 S.Ct. 1697	31
Brinkerhoff - Farris Trust and Savings Co. vs. Hill, (1930) 281 U.S. 672, 74 L.Ed. 1107 50 S. Ct. 451	31
Campanella vs. Bouma (1967) 164 Mont. 217, 520 P.2d 1073	44
Carey vs. Piphus (1978) 435 U.S. 247, 55 L.Ed 2d 252, 98 S.Ct. 1042	30
Chandler vs. Fretag (1954) 348 U.S. 3, 99 L.Ed 2d 4 75 S.Ct.1	43,47

	<u>PAGE</u>
Channel Flying Co. vs. Bernhardt (Alaska, 1969) 451, P. 2d 570	35
Coe Vs. Armour Fertilizer Works (1915) 237 U.S. 413, 59 L. Ed 1027, 35 S.Ct 625	26,27
Country Club Tower Corp. vs. Tower Management (D. Mont., 1967) 275 F. Supp. 468	32
Davis vs. Crouch (1876) 94 U.S. 514, 24 L. Ed 281	50
Ex parte Strickler (D. Ky., 1901) 109 F. 145	49
Farretta vs. California (1975) 422 U.S. 806, 45 L. Ed. 2d 562, 95 S.Ct. 2525	43
Farmers State Bank of Conrad vs. Iverson (1973) 162 Mont. 130, 509 P. 2d 839	16
Garrison vs. Lacey (10th Cir., 1966) 362 F. 2d 799	44

	<u>PAGE</u>
Gibson vs. Erie-Lackawanna Railroad Co. (6th Cir., 1967) 378 F. 2d 476	38
Groppi vs. Leslie (1972) 404 U.S. 496, 30 L. Ed. 2d 632, 92 S. Ct. 582	49,51
Hansberry vs. Lee (1940) 311 U.S. 32, 85 L.Ed. 22	32,33
Hoteling vs. Hoteling (Cal., 1924) 224 P. 455, 56 A.L.R 734	35,39 40,41
Johnson vs. Mississippi (1971) 403 U.S. 212, 29 L. Ed. 2d 423, 91 S.Ct. 1778	43
Kramer vs. Scientific Control Corporation (3 d Cir., 1976) 534 F. 2d 1085	30
Lynch vs. Public Service Commission of Nevada (d. Nev., 1974) 376 F. Supp. 1033	44,47
Miller vs. McCarthy (9th Cir., 1979) 607 F. 2d 854	

	<u>PAGE</u>
Morgan vs. United States (1936) 298 U.S. 468, 80 L. Ed. 1289	30
Pink vs. A.A.A. Highway Express, Inc. (1941) 314 U.S. 201, 86 L. Ed. 152	27
Reynolds vs. State of Georgia (5th Cir., 1981) 640 F. 2d 640	32
Selway vs. Burns (Mt., 1967) 429 P. 2d 640	30
Smith vs. Smith (Ariz. 1977) 564 P.2d 1266	39
State vs. McElveen (Mt., 1979) 544 P. 2d 820	43
State vs. Swan (Mt., 1982) 649, P, 2d 1297	43
United States vs. Boe (8th Cir., 1974) 491 F. 2d 970	49

	<u>PAGE</u>
United States vs. Womack (5th Cir., 1972) 454 F. 2d 1337	35,36
Wood vs. Love County (1920) 253 U.S. 17, 64 L.Ed. 751	31
Worman Motor Co. vs. Hill (1939) 54 Ariz. 227, 94 P. 2d 865	33

CONSTITUTIONAL PROVISIONS

Section 1, Amendment 14, United States Constitution	15
--	----

STATUTES

Title 28 U.S.C. Section 1257 (3) Section 1-3-211, Montana Code Annotated	34
Section 3-1-1001, et.seq. Montana Code Annotated	42
Section 28-2-304 Montana Code Annotated	32
Section 37-61-416 Montana Code Annotated	46

Section 46-11-37,
Montana Code Annotated

37

RULES

Rule 17.1(b) Revised Rules,
Supreme Court of the United States

45

Rule 17.1(c) Revised Rules,
Supreme Court of the United States

27,40,42,
46,47,50

Rule 34, Montana Rules of
Appellate Civil Procedure

26

ENCYCLOPEDIA

3 C.J.S. Agency 398

33

OPINIONS BELOW

The initial opinion of the Montana State District Court is unreported but attached as Appendix A. The decision of the Montana Supreme Court on the first appeal is reported at 639 P.2d 47 and attached as Apperdix B. The Order of the Montana State District Court upon remand is unreported and attached as Appendix C. The Order of the Montana Supreme Court dismissing the second appeal is reported at 39 State Reporter 2125 and attached as Appendix D.

JURISDICTION

The Order the Montana Supreme Court was entered on December 2, 1982 (Appendix D). A timely petition for Rehearing was denied on

December 16, 1982 (Appendix E). The jurisdiction of this Court is invoked pursuant to Title 28 U.S.C. Section 1257 (3).

CONSTITUTIONAL PROVISIONS

Section 1, Amendment 14 (in part): "(N)or shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law."

STATEMENT OF THE CASE

Raph Bouma and Mrs. Ralph Bouma (hereafter referred to collectively

as the "Buyers") purchased a farm on a land exchange contract from Larry C. Iverson, Inc., (hereafter referred to as the "Corporation"). Subsequently, the Corporation became insolvent. Creditors of the Stockholders of the Corporation brought an action to foreclose on stock shares pledged as security on loans, Farmers State Bank of Conrad vs. Iverson (1973) 162 Mont. 130, 509 P.2d 839. Two years after the land exchange contract the Creditors were declared Stockholders of the Corporation in a civil action to appoint a Receiver and to force the Receiver to bring an action to rescind the Buyers contract, United Bank of Pueblo vs. Iverson and Farmers State Bank of Conrad vs. Iverson consolidated cases numbered 8221/8073 decided April 7, 1971 (9th Judicial District, State of Montana, Pondera County). The

decision in that case is attached as Appendix F. The Court appointed George Campanella as the Receiver (hereafter referred to as the "Receiver").

The Receivers brought this civil action against the Buyers to void the land exchange contract. The basis of the action was that the Buyers misrepresented the value of the property and the agents of the Corporation acted outside of their authority. The Buyers alledged numerous defenses. The defenses relevant to this appeal are: (1) The Receiver lacked standing because he was appointed by a fraud on the court in that (A) the allegation that the Bouma contract had an inequitable price was unprovable; (B) Creditors obtained their stock shares by fraud; (C) the defendants in 8221/8073 didnot have a meaning-

ful opportunity to be heard; (2) Ratification; (3) Estoppel.

These defenses were raised in the Trial Court and in the Supreme Court. The Standing of the Receiver was challenged in the Answer of Ralph Bouma at Defenses 10 through 20; Answer of Mrs. Ralph Bouma at Defenses 10 through 15; Appellant Boumas' Brief and Answer to Brief of Larry C. Iverson, Inc., Cross-Appellant at 66; Appellant Boumas' Reply and Rebuttal brief to Answer and Reply brief of Larry C. Iverson, Inc., Cross Appellant and Respondent at 25; Appellant's Brief at vii. Specifically, fraud was argued as a basis for challenging the standing in the Answer of Ralph Bouma at Defense Number 11; Answer of Mrs. Ralph Bouma at Defenses 10 through 15; Defendant Boumas' Motion for Summary Judgment on Plaintiff's Complaint; Appellant Boumas' Brief and Answer to Brief of Larry C. Iverson Inc.,

Cross-Appellant, at 10-11 and 66. Appellant Boumas' Reply and Rebuttal Brief to Answer and Reply Brief of Larry C. Iverson, Inc., Cross-Appellant and Respondent; Appellants' Brief P.vii. Lack of a meaningful trial in the appointment of a Receiver was argued as a basis of challenging the Receiver's standing in the Supplemental Answer at the 28th Defense, Answer of Ralph Bouma at Defense 11; Appellant Boumas' Brief and Answer to Brief of Larry C. Iverson, Inc., Cross-Appellant and Respondent at 25. Ratification and Estoppel were raised as defenses at Answer of Ralph Bouma at the 18th Defense, Appellant Boumas' Brief and Answer to Brief of Larry C. Iverson, Inc., Cross-Appellant at 66; Appellant Boumas Reply and Rebuttal Brief of Larry C. Iverson, Inc., Cross-Appellant and Respondent at 59-64; Appellant's Brief at 3-4; Appellants' Reply Brief at 5.

Before judgment, the Receiver asked the Court's permission to abandon the lawsuit because, among other reasons, the contract value was fair. Instead, the Trial Court substituted a "partially reconstituted corporation" for the Receiver. The Corporation moved for summary judgment.

The Trial Court granted the Corporation's motion for summary judgment. It was done on the narrow grounds that the Corporation's agents acted beyond their authority in selling the farm. The authority provided in the by-laws was held invalid because the Corporation failed to publicly file the by-laws. The Trial Court ordered: (1) the Buyers return the Farm to the Corporation; (2) the Buyers account for rents and profits for the 13 years of possession with interest at the legal rate; (3) The Corporation credit the Buyers the amount it received in 1968 for the land taken in exchange without regard to current market value, rents or

profits or costs of re-entering the cattle business. This resulted in an unrefuted net loss to the Buyers of \$1,400,000.00. The Trial Court held that the Buyers defenses were moot (Appendix G, P21). Both parties appealed.

Ralph Bouma went to the oral arguemnt in his case prepared to argue his case, Pro Se. Only moments before the argument the was to begin the Montana Supreme Court informed him that he would not be allowed to argue his case. His wife's attorney would be required to do so.

No record of Montana Supreme Court proceedings are kept. Objection to this procedure was raised in the Petition for Rehearing--Memorandum at 52; Appellant's Brief at 8; Appellants Reply Brief at 7 to 10. The two opinions of the Montana Supreme Court ignored this

objection (Appendix B; Appendix D).

The Montana Supreme Court affirmed the judgment in part and modified it in part. It bound the Buyers by the findings of fact and conclusions of law of Consolidated Cause Numbered 8221/8073 and did not allow the Buyers to challenge that decision based upon fraud and lack of a meaningful hearing. It held the land exchange contract void on the theory that the agents acted without authority. It held as a matter of law that Ratification and Estoppel could not be raised as defenses. The Court modified the accounting and returned the case to the trial court.

The Corporation moved the District Court for an order transferring possession of the farm to the Receiver. Before this hearing Ralph Bouma filed an Affidavit for Disqualification for Cause to disqualify

Judge Leonard Langen, the presiding judge. Chief Justice Haswell assigned Mark Sullivan to hold a hearing. Judge Langen was given notice but did not appear.

At the disqualification hearing Ralph Bouma presented testimony in support of the affidavit. Date Kiel, an attorney from Conrad, Montana, testified that Judge R.D. McPhillips stated that McPhillips would assign judge prejudiced against the Buyers. Judge McPhillips was the original trial judge and the judge who assigned Judge Langen to the case. Judge Langen summarily disposed of a number of the Buyer's defenses. Judge Langen acted as if he were counsel for the Corporation at times. Finally, Judge Sullivan refused to allow Keil to testify about Judge McPhillips's prejudice.

Henry T. Murray, an appraiser for 35 years, testified at the hear-

ing. He had been re-employed by the Receiver. He said that he observed Judge Langen in this case. Murray said that he had never seen a judge more prejudiced.

In addition, the Buyers argued that Langen had prejudiced members of the Montana Supreme Court. He did so by filing an affidavit of Ralph Bouma. The Affidavit was presented by Bouma for the purpose of an in camera application for initiating a grand jury investigation (Docket Number 474). The affidavit alleged that five justices of the Montana Supreme Court committed certain crimes. The Buyers asked that the application and affidavit not be made public (Memorandum in Lieu of Transcript of Hearing Relating to Application for Order Summoning a Grand Jury Held September 25, 1979, . This Affidavit was later argued by the Corporation as a reason to affirm Judge Langen's

summary judgment.

Judge Sullivan refused to remove Judge Langen as the presiding judge (Appendix H). The Hearing on the Corporation's motion for possession of the farm was held. The Court ordered the farm transferred and modified the accounting (Appendix C). From the order, the Buyers appealed.

On Appeal, Ralph Bouma asked all seven justices who participated in the first decision to disqualify themselves (Motion for Disqualification for Cause, Appendix I; Affidavit for Disqualification for Cause, Appendix J). This motion was denied (Order, Appendix K).

Briefs were filed by both parties. The Montana Supreme Court dismissed the appeal. It awarded \$500.00 in damages on appeal to the Corporation. The Buyers had no notice or opportunity to be heard on

the issue of damages on appeal. This is because the Corporation did not ask for such relief. Nor did the Montana Supreme Court give notice to the Buyers that it was considering such relief. On Rehearing, the Buyers asked the Court to reconsider this issue along with all the other issues (Petition for Rehearing Pursuant to Rule 34, Montana Rules of Appellate Civil Procedure, Appendix L). The Petition for a Rehearing was denied without opinion (Appendix E).

ARGUMENT

I. THE BUYERS WERE HELD BOUND BY A PRIOR COURT DECISION TO WHICH THEY WERE NOT PARTIES. THEIR DEFENSE THAT THE PRIOR COURT DECISION WAS OBTAINED BY A FRAUD ON THE COURT WAS IGNORED BY THE MONTANA COURTS. THIS VIOLATED DUE PROCESS OF LAW BECAUSE THE BUYERS WERE NOT PARTIES TO THE PRIOR COURT ACTION.

A person not a party to a prior court action may allege Fraud as a defense to being bound by the prior court action, Coe vs. Armour

Fertilizer Works (1915) 237 U.S. 413, 59 L. Ed 1027, 35 S. Ct. 625; Hansberry vs. Lee (1940) 311 U.S. 32, 85 L. Ed. 22; Pink vs. A.A.A. Highway Express (1941) 314 U.S. 201, 86 L.Ed 152. The refusal by a state court to allow the person to defend on the grounds violates due process, Coe. Further, a state court which refuses to allow fraud to be raised decides a federal question in conflict with the above decisions, Rule 17.1(c), Revised Rules, Supreme Court of the United States.

The present action was initiated by a Receiver. The Receiver was appointed in a civil action (Consolidated Cause Numbered 8221/8073). Further, the Court concluded that United Bank of Pueblo and Farmers State Bank of Conrad were stockholders in Iverson, Inc. The Buyers

were not parties to that action.

The Receiver brought this action against the Buyers to void the contract for deed. The Buyers, as a defense, alleged fraud on the Court in 8221/8073. Specifically, the Buyers challenged the appointment of the Receiver. The basis of the challenge was that the Plaintiffs in 8221/8073. Specifically, the Buyers challenged the appointment of the Receiver. The basis of the challenge was that the Plaintiffs in 8221/8073 who petitioned for the Receiver's appointment obtained their stock by fraud on the court. The Receiver alleged inadequate consideration in the Buyers land exchange contract as the primary equitable basis for rescission. The Buyers alleged that the Receiver joined in the fraud of the Plaintiffs in 8221/8073 because there was adequate consideration. As proof, the Buyers relied on the Receiver's own state-

ment that an inequitable disparity in the purchase price was unprovable (Receiver's Statement to the Court of December 22, 1977, Appendix M).

Also, the decision in 8221/8073 found the Plaintiffs to be Stockholders. The Buyers were bound by this decision, also. They claimed this decision was made by a fraud on the Court. This was because the Defendants in 8221/8073 case were given only 2½ hours to present their case. This was shown in the Deposition of Judge Robert S. Keller, (Appendix N, P.271,272, 290)

KELLER: Mr. Treadaway, how long do you think it will take for presentation of your defense?

TREADAWAY: Well, the Plaintiff has taken 2½ weeks to present their case and I anticipate that it will take us about the same length of time to put on our defense.

KELLER: Mr. Treadaway, you may be sitting in this for the next 2½ weeks, but I certainly am not going to be here. In fact, I have checked out of the motel and I will be on my way to

Kalispell at 5 o'clock this afternoon. (This Discussion took place at about 2:30 P.M.)

The defendants were not allowed to present their full defense. If a meaningful defense was allowed, the Creditors would not have been declared Stockholders.

Fraud upon the court is to deny a party his day in court, Selway vs. Burns (Mont., 1967) 429 P.2d 640. In this case, the Defendants who stood in the Buyers place had an inadequate opportunity to present their case, Carey vs. Piphus (1978) 435 U.S. 247, 55 L.Ed. 2d 252, 98 S. Ct. 1042; Morgan vs. United States (1936) 298 U.S. 468, 80 L.Ed 1289; Lynch vs. Public Service Commission of Nevada (D. Nev. 1974) 376 F. Supp. 1033. The refusal of the Montana Supreme Court to consider this defense of fraud upon the Court violated the above United State Supreme Court decisions on due process. It makes the Montana Supreme Court's

descision reviewable on a writ of certiorari, Rule 17.1(c) Revised Rules, Supreme Court of the United States.

In summary, fraud was alleged as a defense to the Buyers being bound by a prior state cour decision. It was disregarded by the Montana Court. Fraud may be raised as a defense to being bound by a prior court decision. To refuse to do so violated United States Supreme Court decisions on due process.

II. AN UNFORESEEN CHANGE IN STATE COURT CIVIL PROCEDURE DENIES THE BUYERS RIGHT TO DUE PROCESS OF LAW.

An unforeseen change in state civil procedure which denies a party the right to be heard denies due process of law. Brinkerhoff-Farris Trust and Savings Co. vs. Hill (1930) 281 U.S. 672, 74 .Ed. 1107, 50 S.Ct. 451; Bouie vs. Columbia (1964) 378 U.S. 347, 12 L.ED 2d 894, 84 S.Ct 1967; Ward vs. Love County (1920) 253 U.S. 17, 64 L.Ed

751; Robinson vs. Ariyoshi (D. Hawaii, 1977) 441 F. Supp. 559. Such a denial of due process is reviewable by writ of certiorari, Reynolds vs. State of Georgia (5th Cir., 1981) 640 F. 2d 702; Country Club Tower Corp. vs. Tower Management (D. Mont., 1967) 275 F. Supp. 468.

In this case, the Buyers raised Ratification and Estoppel as defenses. In 1979, the Montana Supreme Court recognized Ratification as a defense to action brought to void unauthorized acts of an agent. Audit Services, Inc., vs. Francis Tindall Const. (Mont. 1979) 600 P.2d 811, 813, also Section 28-2-304, Montana Code Annotated. In this case, the Montana Supreme Court reversed itself without explanation. It held that contracts entered into without authority may not be ratified, Iverson vs. Bouma (Mt. 1982) 639 P.2d 49, 60.

In Justice Daly's opinion, Hoteling vs. Hoteling (Cal., 1924) 224 P. 455, 56 A.L.R. 734 was cited in support of the rule that agents

may not act beyond their authority. Yet, in Hoteling the California Supreme Court allowed ratification to be raised as a defense, 224 P. at 459. It ruled that the facts did not prove the defense of ratification.

Also, the Court cited Worman Motor Co. vs. Hill (1939) 54 Ariz. 227, 94 P. 2d 865 for the rule that persons without authority lack capacity to contract. In Worman Motor, a minor brought an action to declare a contract void which was signed when the Plaintiff was under the age of majority. The Arizona Supreme Court says that such a contract may be valid if the minor keeps what he purchased essentially ratifying the contract.

Further, Estoppel is a defense to an action based upon agents acting without authority, 3 C.J.S. Agency Section 398. Yet, the

Montana Supreme Court said that Estoppel may not be raised in such an action as a matter of law.

Further, the basis of voiding the land exchange contract was that the corporate by-laws had not been filed by the Corporation. This was a failure of the Corporation to act; not the Buyers. Montana law states, "No one should suffer for the acts of another," Section 1-3-211, M.C.A.

The elimination of Ratification and Estoppel as defenses is an unforeseen change in state procedure. It violated the due process clause for the Montana Supreme Court to do so. Whether the elimination of two defenses in this violates due process is an important federal question, Rule 17.1, Revised Rules, Supreme Court of the United States. The United States Supreme Court should grant cert-

iorari.

III. THE MONTANA TRIAL COURT DENIED THE BUYERS' RIGHT TO DUE PROCESS OF LAW BY REFUSING TO REMOVE JUDGE LEONARD LANGEN FROM FROM THE CASE.

The right to due process of law is guaranteed under the 14th Amendment to the United States Constitution. Included in the right to due process is the right to a fair and impartial tribunal, Johnson vs. Mississippi (1971) 403 U.S. 212, 29 L. Ed 2d 423, 91 S.Ct. 1778, Channel Flying Co. vs. Bernhardt (Alaska, 1969) 451 P.2d 570. The facts in this case show that the Buyers were denied that right.

Prior judicial involvement may provide a factual basis for doubting a judge's impartiality. Blizard vs. Frechette (1st Cir., 1979) 601 F. 2d 1217, United States vs. Womack , (5th Cir., 1972) 454 F.2d 1337

24 A.L.R. Fed. 276. In Womack, a Federal District Judge's remarks and actions during judicial proceedings showed personal bias. The Defendant filed an affidavit of disqualification which was denied. The Court of Appeals reversed the decision and ordered a new trial.

In this case, Judge Langen's bias was shown. First, he was assigned the case by Judge R.D. McPhillips. The uncontroverted evidence shows that Judge McPhillips was in a position to manipulate the case by the appointment of a presiding judge. McPhillips wanted the presiding judge to associate the Buyers with John C. Treadaway and J. Milton Krull.

Second, the uncontroverted evidence shows that Judge Langen summarily disposed of a number of the Buyers defenses. Third, it

shows that Judge Langen appeared prejudiced against the buyers.

Fourth, Ralph Bouma presented in camera an affidavit. That affidavit was for the sole purpose of initiating a criminal investigation. It accused five Justices of the Montana Supreme Court of crimes. Judge Langen said that he had no jurisdiction to hear the application for the impaneling of a grand jury. His reasoning was that he was only assigned to a civil case; the affidavit involved a criminal matter. Bouma argued that the affidavit should not be included in this civil action file so that the Supreme Court would not be prejudiced

Yet, Judge Langen ordered it filed in the civil action file despite the fact that such proceedings are secret, Section 46-11-317, Montana Code Annotated.

Fifth, Judge Langen's summary substitution of a "partially reconstituted Corporation" for the Receiver shows his bias against the Buyers. The Receiver petitioned to abandon this civil action. Then, Judge Langen created a new legal entity, a "Partially reconstituted Corporation" to take its place. Prior to this case, there was no such entity in Montana Law.

Sixth, if a judge acts as he is counsel for one party, then the other party's right to due process was violated, Gibson v. Erie Lackawanna Railroad Co. (6th Cir., 1967) 378 F. 2d 476. Judge Langen's remarks were more consistent with those of an attorney for the Corporation than as presiding judge.

Seventh, if a judge is a defendant in a civil rights action brought by a party to a law suit, then that judge may not sit on the case,

Johnson. In this case, Judge Langen was a defendant in a civil right action brought by the Buyers. He cannot sit as the Judge.

The Corporation cited Smith vs. Smith (Ariz., 1977) 564, P.2d 1266 for the rule that if a party brings the action against the judge solely to disqualify the judge, then the party may not disqualify the judge. In this case, there was no connection between the Buyers civil rights action and the disqualification proceedings. The Civil Rights Action was for injunctive relief against the judgment entered by Judge Langen on the basis that Judge Langen had violated the Buyers Civil Rights.

Eighth, Judge Langen's bias continued to show in the proceeding following the disqualification hearing. On January 19, 1982, the

Corporation filed a motion and notice of hearing to deliver possession of the farm to the Receiver. The hearing was set for February 26, 1982. Immediately prior to that hearing and without notice to the Buyers the Court substituted the Corporation for the Receiver to get possession of the farm.

The Montana Trial Court violated the Buyers right to due process of law when it denied the Buyers motion to disqualify Judge Langen. This is an important federal question which has not been decided, Rule 17.1(c), Revised Rules, Supreme Court of the United States. The United States Supreme Court should grant a writ of Certiorari on this basis.

IV. THE MONTANA SUPREME COURT DENIED THE BUYERS RIGHT TO DUE PROCESS OF LAW BY ACTING UPON BIAS AND PREJUDICE.

In Johnson, the United States Supreme Court held that a State

Judge violated a party's right to due process by failing to excuse himself. The State Judge was a Defendant in a civil rights action brought by the party. The United States Supreme Court said that the State Judge was so "enmeshed" in matters regarding the party that it violated due process for the State Judge to decide the matter.

In this case, five of the seven Justices were named in a civil action by the Buyers, 639 P.2d at 53. Also, they were named as possible defendants in an affidavit requesting the impaneling of a grand jury. This affidavit was used at oral argument by the Corporation over the objection of the Buyers to emotionalize and incense the Montana Supreme Court. The Justices were too enmeshed in this case to be unbiased, Johnson.

The Corporation argued that if the Montana Supreme Court cannot act in this case because of its bias, then no decision may be rendered. The Montana Supreme Court could have resolved this by having substitute justices appointed by the Judicial Nominating Commission, Section 3-1-1001, et.seq., Montana Code Annotated. This was suggested by Ralph Bouma.

The question of whether a State Supreme Court is so enmeshed with a party that it cannot decide a case had not been decided by the United States Supreme Court. It is an important federal question under Rule 17.1(c), Revised Rules, Supreme Court of the United States. The petition for a writ of certiorari should be granted on this basis.

V. THE MONTANA SUPREME COURT REFUSED TO ALLOW RALPH BOUMA TO ORALLY ARGUE HIS CASE, PRO SE. THIS VIOLATED THE DUE PROCESS AND EQUAL PROTECTION CLAUSES OF THE UNITED STATES CONSTITUTION.

A party to a legal action has to constitutional right to represent himself, Faretta vs. California (1975) 422 U.S. 806, 45 L. Ed 2d 562, 95 S. Ct. 2525. The refusal of a court to allow a person to represent himself violated due process, Kramer vs. Scientific Control Corporation (3rd Cir., 1976) 534 F. 2d 1085. Further, the right to counsel includes a reasonable opporutnity to consult with counsel, Chandler vs. Fretag (1954) 348 U.S. 3,99 L.Ed. 2d 4, 75 S.Ct. 1; see State vs. Swan (Mt. 1982) 649 P. 3d 1297; State vs. McElveen (Mt., 1979) 544 P.2d 820.

In this case, Ralph Bouma had represented himself, Pro Se, through

out the litigation. He appeared at the oral argument before the Montana Supreme Court prepared to argue his case. He had been instructed to do so in Campanella vs. Bouma (1967) 164 Mont. 217, 520 P. 2d 1073. Moments before the argument, he was told by the Montana Supreme Court that he would not be allowed to argue. His wife's attorney would argue his case for him. This procedure violated due process of law for several reasons.

First, a party has a right to represent himself, Faretta. Although Faretta is a criminal case, the federal circuit courts are extending this to civil actions as well, Kramer, Garrison vs. Lacey (10th Cir., 1966) 362 F. 2d 799; see Miller vs. McCarthy (9th Cir., 1979) 607 F. 2d 854.

To the Petitioners' knowledge, only in Montana is the right to represent oneself in a civil action limited. The Montana Supreme Court has decided a federal question in conflict with several federal courts of appeal, Rule 17.1(b), Revised Rules, Supreme Court of the United States. The federal question is whether a person has the right to represent himself in a civil action. The United States Circuit Courts of Appeal of the Third, Ninth and Tenth Circuits have said a person does have the right. The Montana Supreme Court has said the person does not.

Second, the Montana Supreme Court denied Ralph Bouma's right to effective assistance of counsel. This was done by notifying his only moments before argument that his wife's attorney would be required to

argue his case. Ralph Bouma was prepared to argue his case. To guarantee effective assistance of counsel, a reasonable time to prepare must be given, Chandler. The denial of adequate preparation time in a civil case is an important question of federal law not settled by the United States Supreme Court, Rule 17.1(c), Revised Rules, Supreme Court of the United States.

Third, to deny Ralph Bouma the right to oral argument but allow the corporation oral argument denies equal protection of the law. In Montana, a person has the right to represent himself, Section 37-61-416, Montana Code Annotated. Equal protection of the law would guarantee that a person representing himself has the same rights as a person represented by an attorney, see Miller. In this case, Ralph Bouma was denied the right to oral argument before the Montana Supreme Court.

His opponent, The Corporation, was allowed the right to oral argument. This violates the equal protection of the laws.

Whether a party who represents himself may be denied oral argument on appeal which is given to the opposing party because he is represented by an attorney is an important question of federal law, Rule 17.1(c), Revised Rules, Supreme Court of the United States. It has not been settled by the United States Supreme Court. It should be settled by granting this writ of certiorari.

In summary, Ralph Bouma was denied the right to represent himself at oral argument on appeal. The manner in which this was done violated his right to effective assistance of counsel on appeal. Also, it denied him equal protection of the laws by denying him oral argument and allowing the opposing party oral argument. All of these decisions are in

conflict with a decision of a federal circuit court or are important, unsettled federal question.

VI. THE BUYERS WERE ORDERED TO PAY DAMAGES ON APPEAL TO THE CORPORATION IN THE AMOUNT OF \$500.00. THIS ORDER WAS MADE WITHOUT NOTICE OR OPPORTUNITY TO BE HEARD.

The State may not take a peron's property without due process of law. Due process of law includes some notice and opportunity to be heard, Groppi vs. Leslie (1972) 404, U.S. 496, 30 L.Ed. 2d 632, 92 S.Ct. 582; United States vs. Boe (8th Cir., 1974) 491 F.2d 970; Ex Parte Strickler (D. Ky., 1901) 109 F. 145.

In this case, the Corporation did not ask for damages on appeal. The Montana Supreme Court did not notify the Buyers that the Court was considering imposing damages on appeal. The Montana Supreme Court awarded the damages without any notice or oppurtunity to be heard.

The awarding of damages on appeal without notice or hearing may

be distinguished from Groppi. In Groppi, a person was fined and jailed for contempt without any notice or hearing. There was no contempt finding in the present case. But as a practical matter, there is no difference between a fine for contempt and an order to pay damages. The person still suffers a loss of property without notice or hearing.

The Montana Supreme Court held that the second appeal was frivolous. For this reason, the \$500.00 damages were awarded. If the Buyers had been given a chance they would have shown the second appeal was not frivolous. They could have shown that the decision on the first appeal was not final under Title 28 U.S.C. Section 1257. The decision on the first appeal was not final because the trial court's decision was modified in part, Davis vs. Crouch (1876) 94 U.S. 514, 24 L.Ed. 281. Since

the first decision was not final, an appeal of the trial court' second order was necessary for a petition for a writ of certiorari to be filed.

This deprivation of property without due process is an important federal question undecided by the United States Supreme Court or in conflict with the Groppi decision. Under Rule 17.1(c), Revised Rules, Supreme Court of the United States, the United States Supreme Court should grant the petition for a writ of certiorari.

CONCLUSION

The Buyers under the contract for deed were denied due process and equal protection of the laws for the reasons stated above. The United States Supreme Court should grant a writ of certiorari and review this cause. Upon review of the cause, the Court should order a jury trial to be held.

Dated this 8th day of march, 1983.

15/RALPH BOUMA

Ralph Bouma
Attorney Pro Se
P.O. Box 220
Choteau, Mt. 59422

15/JOHN ALBRECHT

John Albrecht
Attorney for Mrs. Ralph Bouma
P.O. Box 193
Choteau, Mt. 59422

CERTIFICATE OF MAILING

We certify that on this 8th day of March, 1983, that three copies of the petition for a writ of certiorari and all volumes of the Appendix were mailed, postage pre-paid to:

Ray Koby
Swanber, Koby, Swanberg and Matteucci
P.O. Box 2567
Great Falls, Montana 59401

Cresap S. McCracken
Church, Harris, Johnson and Williams
P.O. Box 1645
Great Falls, Montana 59403

Dated this 8th day of March, 1983.

15/ JOHN ALBRECHT
John Albrecht

15/ RALPH BOUMA
Ralph Bouma